

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 412

Introduced by McGill, 26; Preister, 5;

Read first time January 16, 2007

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to electricity; to amend section 79-1035.01,
2 Reissue Revised Statutes of Nebraska; to provide for a
3 renewable portfolio standard; to provide for renewable
4 energy credits; to provide duties for the Nebraska Power
5 Review Board; to provide for penalties and civil actions;
6 to change provisions relating to the permanent school
7 fund; to provide severability; and to repeal the original
8 section.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds that (a) fuel
2 diversity, environmental, and economic benefits from renewable
3 resources accrue to the public at large, (b) reduced energy use
4 through energy efficiency and conservation reduces energy costs for
5 consumers and delays the need for construction of new power plants,
6 and (c) all consumers and retail suppliers have an equal obligation
7 to support energy efficiency and the use of a minimum amount of
8 renewable resources.

9 (2) It is the intent of the Legislature to (a) provide
10 a stable economic environment for the continued productivity and
11 advancement of renewable energy resources and technologies and to
12 secure their inherent public benefits while ensuring that consumers
13 receive electricity from renewable resources at a price based
14 on market competition among these resources, (b) achieve energy
15 efficiency which will reduce the demand for electricity by retail
16 consumers and extend the operating lives of existing generation
17 facilities, and (c) create a stable policy that will enable
18 long-term financing and long-term contracts and lower the cost of
19 renewable energy resources for consumers.

20 Sec. 2. For purposes of sections 1 to 11 of this act:

21 (1) Biomass includes crops and organic waste but excludes
22 all other solid waste such as municipal solid waste, tires, treated
23 wood, black liquor, and construction and demolition debris;

24 (2) Eligible renewable energy generator means a person
25 owning a facility that produces electricity from an eligible

1 renewable energy resource, including a facility the installation
2 or operation of which is required under federal law, but does
3 not include a facility the installation or operation of which is
4 required under the laws of another state even if the installation
5 or operation of the facility is also required under federal law;

6 (3) Eligible renewable energy resource means electricity
7 generated from wind energy, solar energy, landfill gas, geothermal
8 energy, fuel cells, or biomass;

9 (4) Energy efficiency measure means any measure designed,
10 intended, or used to reduce the consumption of energy by the retail
11 customer in which the costs of the acquisition or installation
12 of the measure are directly reimbursed, in whole or in part, by
13 the provider of the electric service. The term does not include
14 any demand response measure or load limiting measure that shifts
15 the consumption of energy by a retail customer from one period to
16 another;

17 (5) Renewable energy credit means a tradable certificate
18 of proof of one kilowatt hour of electricity generated from
19 an eligible renewable energy resource and may include energy
20 efficiency measures equal to or less than one-quarter of the total
21 standard required in any particular year as described in section 3
22 of this act;

23 (6) Renewable portfolio standard means the percentage of
24 electricity sold to Nebraska consumers that must be derived from
25 an eligible renewable energy resource pursuant to the requirements

1 of section 3 of this act, which may include credit for energy
2 efficiency measures; and

3 (7) Retail electricity supplier means a distributor of
4 electricity to retail customers in Nebraska.

5 Sec. 3. (1) The renewable portfolio standard shall
6 consist of the required percentage of each retail electricity
7 supplier's total kilowatt hours sold to retail customers in
8 Nebraska from eligible renewable energy resources which shall
9 equal one percent in calendar year 2008, shall increase one percent
10 in each succeeding calendar year beginning in calendar year 2010
11 up to ten percent in calendar year 2019, and shall remain at
12 ten percent each year thereafter. The contribution from energy
13 efficiency measures to meet the renewable portfolio standard may
14 be equal to or less than one-quarter of the total standard in any
15 particular year as described in this section.

16 (2) In facilities that use multiple fuels, only the
17 electricity generated by an eligible renewable energy generator
18 shall be eligible for renewable energy credits unless the use of
19 nonqualifying fuels is below a minimum level established by the
20 Nebraska Power Review Board.

21 Sec. 4. The Nebraska Power Review Board shall, by January
22 1, 2008, establish a program to issue renewable energy credits
23 to eligible renewable energy generators. The board or its duly
24 authorized agent shall:

25 (1) Inspect and register renewable energy credits,

1 certify and audit output, and verify transactions;

2 (2) Impose and collect a fee on renewable energy credit
3 applicants to cover the administrative costs of carrying out its
4 duties and purposes under sections 1 to 11 of this act; and

5 (3) Adopt and promulgate rules and regulations to carry
6 out such sections.

7 Sec. 5. (1) On or before March 30, 2010, and on or
8 before March 30 of each year thereafter, each retail electricity
9 supplier shall submit a report to the Nebraska Power Review Board
10 which contains evidence of ownership of sufficient renewable energy
11 credits and energy efficiency measures implemented to satisfy the
12 renewable portfolio standard for the calendar year as required in
13 section 3 of this act.

14 (2) Each retail electricity supplier shall include the
15 required percentage of eligible renewable energy resources under
16 the renewable portfolio standard for electricity products sold
17 to Nebraska customers. A retail electricity supplier shall not
18 represent to any customer or prospective customer that its
19 electricity products contain more than the specified percentage
20 of eligible renewable energy resources when the additional amount
21 of eligible renewable energy resources is being used to satisfy the
22 renewable portfolio standard.

23 Sec. 6. Renewable energy credits may be sold or exchanged
24 by the person to whom the credits are issued or by any other person
25 who acquires the credits. A sale or exchange of renewable energy

1 credits is not valid unless it is recorded with the Nebraska Power
2 Review Board within ninety days after the conclusion of the sale or
3 exchange.

4 Sec. 7. The Nebraska Power Review Board shall impose
5 an administrative penalty against a retail electricity supplier
6 for violating any provision of sections 3 to 6 of this act. The
7 administrative penalty for failure to produce and receive approval
8 of the required number of renewable energy credits shall be in
9 an amount equal to three times the estimated market value of a
10 renewable energy credit for each renewable energy credit that a
11 retail electricity supplier fails to acquire and retire. A penalty
12 imposed under this section does not diminish the liability of
13 a retail electricity supplier for the same violation under any
14 other applicable provision of law. All funds collected under this
15 section shall be remitted to the State Treasurer for credit to the
16 permanent school fund.

17 Sec. 8. The annual interest and other income from the
18 funds collected under section 7 of this act, but not the principal,
19 shall be used solely for expenses related to renewable energy
20 generation in school districts.

21 Sec. 9. If the federal government enacts a renewable
22 portfolio standard that is lower than the renewable portfolio
23 standard required under section 3 of this act, the incremental
24 amount from the renewable portfolio standard required under such
25 section shall be added to the federal renewable portfolio standard.

1 If the federal renewable portfolio standard is the same or higher
2 than the renewable portfolio standard under such section, the
3 Nebraska Power Review Board shall include in its annual report to
4 the Legislature under section 11 of this act a recommendation to
5 modify or phase out the renewable portfolio standard under such
6 section at the time the federal renewable portfolio standard takes
7 effect if the board, after a public hearing, determines that the
8 state's goals will be satisfied by the federal requirement and
9 that investments made to satisfy the renewable portfolio standard
10 required under section 3 of this act will not be placed in
11 jeopardy.

12 Sec. 10. Any person may commence a civil action on his or
13 her own behalf against any of the following:

14 (1) Any person violating any provision of sections 1 to
15 7 of this act;

16 (2) The Nebraska Power Review Board or its duly
17 authorized agent for failure to perform any act or duty pursuant to
18 such sections that is not discretionary; or

19 (3) Any person applying for renewable energy credits who
20 provides false information.

21 Sec. 11. The Nebraska Power Review Board shall annually
22 provide a report to the Legislature that includes the activities of
23 the board under sections 1 to 9 of this act, program results, data,
24 and any recommendations to achieve increased use and availability
25 of renewable energy resources in the State of Nebraska.

1 Sec. 12. Section 79-1035.01, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 79-1035.01 The permanent school fund is the fund
4 described in Article VII, sections 7 and 8, of the Constitution
5 of Nebraska, the principal of which shall be held and invested in
6 perpetuity by the state in trust for the support of its common
7 schools. The Except as provided in sections 7 and 8 of this act,
8 the annual interest and other income, but not the principal, is
9 subject to use for the support and maintenance of the common
10 schools in each public school district of the state as the
11 Legislature provides in accordance with Article VII, section 9, of
12 the Constitution of Nebraska.

13 Sec. 13. If any section in this act or any part of any
14 section is declared invalid or unconstitutional, the declaration
15 shall not affect the validity or constitutionality of the remaining
16 portions.

17 Sec. 14. Original section 79-1035.01, Reissue Revised
18 Statutes of Nebraska, is repealed.